

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

FULL BOARD MEETING MINUTES**

OCTOBER 7, 2003

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

William Elkins, President
Ron Alvarado, Vice President
Sean Harrigan, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The State Personnel Board (SPB) received a letter from Assemblyman Firebaugh concerning the "Outreach and Diversity" regulations recently adopted by the Board. SPB staff will provide background information to the Board and draft a response.
- B. SPB staff has drafted a response to the request by the Department of Finance to submit proposals for a 20% General Fund reduction for the fiscal year 2004-05. Reduction proposals were shared with the Board.

**The State Personnel Board Summary Minutes can be obtained at the following Internet address:
<http://www.spb.ca.gov/calendar.htm>

- C. SPB staff is conducting an investigation involving several examinations administered by the Office of the Inspector General.
- D. Follow-up work continues with the Department of General Services (DGS) and the Department of Personnel Administration to complete the transition of employees in the DGS Demonstration Project to other civil service classes.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

Litigation:

- A. Association of California State Attorneys & Administrative Law Judges (ACSA) v. Department of Personnel Administration (DPA), International Union of Operating Engineers (IUOE) & California Department of Forestry and Fire Protection (CDF) - Firefighters have filed petitions for review with the Supreme Court. The State Personnel Board (SPB) will file a response. A court decision is expected, most likely, mid December.
- B. California Youth Authority (CYA) v. SPB (Henning) - DPA has filed a motion on behalf of CYA to prevent SPB from participating in the appeal. SPB is filing a response.
- C. Godfrey v. CYA - Court of Appeal denied petition for rehearing, but issued a modified decision clarifying some of the issues raised in the petition for rehearing.
- D. Byrd v. Department of Social Services (DSS) - Superior Court denied writ on grounds that the matter was not timely scheduled for hearing (more than 5 years passed from date of filing) and on grounds of laches.

Other:

- A. Labor and Workforce Development Agency - SPB's Chief Counsel attended the October 1, 2003 meeting of the Chief Counsels of departments under the agency, as a guest speaker along with DPA's Chief Counsel, and others.

4. NEW BUSINESS

- A. State Personnel Board member "Election of Officers" to be held at the December 2, 2003, Board meeting.

5. REPORT ON LEGISLATION - Sherry Hicks

No report was given.

6. PERS UPDATE - Sean Harrigan

The Board was advised of the following:

- A. The Public Employment Retirement System (PERS) staff is working on implementing the department's strategic plan for health programs. Staff is attempting to put together a prescription drug purchasers coalition with the States of Oregon, Washington, Idaho and New Mexico to reduce costs.
- B. PERS is also involved in a search effort to hire someone to manage their Health Benefits Department.
- C. CalPERS portfolio is up substantially this year. Total assets are now approximately \$150 billion.
- D. Some public agencies (predominantly smaller agencies in southern California) have withdrawn from PERS as a result of recent decisions by PERS to not change to regional ratings this year.
- E. PERS has been involved in meeting with some of the Board members of the New York Stock Exchange (NYSE) to talk about governance principles. PERS will also meet with the new chairman of NYSE to discuss similar issues.
- F. The Security Exchange Commission is scheduled to release their rules on shareholder access to proxies. PERS and other funds will prepare a response to these rules.

7. HEARING - PSC NO. 03-04

Appeal of the California Department of Education and McGeorge School of Law from the Executive Officer's April 30, 2003, disapproval of a contract for special education mediation conferences and due process hearings.

Persons Participating:

Gregory J. Rousseve, Deputy General Counsel, Legal and Audits Branch, Department of Education
Charity Kenyon, Attorney at Law, McGeorge School of Law
Steven Bassoff, Attorney at Law, California Attorneys,
Administrative Law Judges and Hearing Officers (CASE)
Dale P. Mentink, Senior Attorney, Protection & Advocacy, Inc.

ACTION: Submitted

8. ORAL ARGUMENT

Oral argument in the matter of ADREIN SMITH, CASE NO. 02-0896A. Appeal from non-punitive termination. Department of Corrections.

Persons Participating:

No oral argument was held as the appellant and appellant's representative did not show. The Department of Corrections submitted written testimony.

ACTION: Submitted

BOARD ACTIONS

9. STATE PERSONNEL BOARD SUMMARY MINUTES OF SEPTEMBER 9 and 23, 2003

ACTION: Adopted on October 7, 2003.
VOTE: Elkins, Alvarado, Harrigan - Aye.

10. ACTION ON SUBMITTED ITEMS

ACTION: See pages 13-14.

11. ADMINISTRATIVE LAW JUDGE CASES

On October 7, 2003, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Alvarado, Harrigan - Aye.

REJECTED DECISION

STEVEN PAUL, CASE NO. 03-0221

Appeal from five-percent reduction in salary for six months
Caltrans Heavy Equipment Mechanic

Department of Transportation

ACTION: Board adopted a decision determining that the appellant's failure to proceed at the hearing constitutes a withdrawal of the appeal and that the adverse action imposed by the Department is final as a matter of law

REJECTED AND REMANDED DECISION

CHRISTINA SALAZAR, CASE NO. 99-5136E

Appeal from denial of request for reasonable accommodation

Disability Insurance Program Representative

Employment Development Department

ACTION: Appeal from denial of request for reasonable accommodation granted

CHIEF COUNSEL RESOLUTION

MARY HUTTNER, CASE NO. 02-1690

Request for order to show cause

Staff Services Manager I

Department of Health Services

ACTION: Board adopted a resolution remanding to Administrative Law Judge for determination as to whether respondent complied with settlement

PROPOSED DECISIONS

TERESA BROWN-JOHNSON, CASE NO. 0536E

Appeal from discrimination/retaliation complaint

Nurse Evaluator II

Department of Health Services

ACTION: Discrimination /retaliation complaint denied for lack of evidence

Minutes - Page 6
October 7, 2003

JOSE DELGADO, CASE NO. 03-0346
Appeal from five-percent reduction
in salary for six months
Correctional Lieutenant
Ironwood State Prison - Blythe
Department of Corrections
ACTION: Five-percent reduction in salary for six months
revoked

DAMON FLINN, CASE NO. 03-2139
Appeal from official reprimand
Correctional Officer
Wasco State Prison
Department of Corrections
ACTION: Official reprimand revoked

RODGER FLUKE, CASE NO. 03-0266
Appeal from demotion from Staff Information Systems Analyst
(Specialist) to Associate Information Systems Analyst
(Specialist)
Commission on Peace Officer Standards and Training,
Sacramento
ACTION: Demotion from Staff Information Systems Analyst
(Specialist) to Associate Information Systems Analyst
(Specialist) modified to a temporary demotion for one year

FRANK GARCIA, CASE NO. 03-1906
Appeal from dismissal
Caltrans Highway Maintenance Worker
Department of Transportation
ACTION: Administrative Law Judge's proposed
decision rejected by Board. Board to decide
case itself

SHEILA M. HAWKINS, CASE NO. 02-3716
Appeal from demotion
Private Postsecondary Education Administrator to the
position of Private Postsecondary Education Senior
Specialist
Bureau for Private Postsecondary and Vocational Education
Department of Consumer Affairs
ACTION: Demotion modified to a five-percent reduction in
salary for six months

JACQUES HIRSCHLER, CASE NO. 02-1276
Appeal from dismissal
Chief Medical Officer
Deuel Vocational Institute - Tracy
Department of Corrections
ACTION: Dismissal revoked

ANDREW MAURICIO, CASE NO. 03-0864
Appeal from dismissal
Correctional Officer
California Institution for Men - Chino
Department of Corrections
ACTION: Dismissal revoked

MARK WEISLER, CASE NO. 03-2197
Appeal from whistleblower retaliation
Management Personnel Plan Administrator III
California State University - San Jose
ACTION: Whistleblower retaliation complaint dismissed for
lack of jurisdiction

PETITIONS FOR REHEARING

DOUGLAS FORS, CASE NO. 03-1346
Appeal from dismissal
Caltrans Equipment Operator I
Department of Transportation
ACTION: Petition for rehearing filed by Appellant denied

SHERRY PARKS CASE NO. 01-3075E
and DAVA NUNES, CASE NO. 01-3244E
Appeal from denial of request for
reasonable accommodation
Library Technical Assistant
Corcoran State Prison
Department of Corrections
ACTION: Petition for rehearing filed by Appellants denied

DONNA OVERLEY, CASE NO'S. 02-0251 &
02-0995E
Appeal from constructive medical
termination and denial of request
for reasonable accommodation
Office Assistant
Corcoran - State Prison
Department of Corrections
ACTION: Petition for rehearing filed by appellant denied

STEPHEN VAN ZEE, CASE NO. 01-3017P
Appeal from denial of transfer
to the position of Deputy
Inspector General
Department of Justice
ACTION: Petition for rehearing filed by appellant denied

STIPULATIONS

THOMAS HUNT, CASE NO. 03-2730
Appeal seeking retroactive appointment from
Senior Transportation Operations Supervisor to
Supervisor, Operations and Safety Section
Public Utilities Commission
ACTION: Settlement agreement approved and appointment
backdated

ROBERT LONG, CASE NO. 03-2255
Appeal seeking retroactive appointment from
Transportation Representative to Senior Transportation
Representative
Public Utilities Commission
ACTION: Settlement agreement approved and appointment
backdated

12. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION
18671.1 EXTENSION.

ACTION: Adopted. See page X.

13. WITHHOLD APPEALS
On October 7, 2003, the Board adopted the following decisions
presented by Laura Aguilera, Assistant Executive Officer,
California State Personnel Board.
VOTE: Elkins, Alvarado, Harrigan - Aye.

DELISA BRYANT, CASE NO. 03-0230
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOSHUA BULLARD, CASE NO. 03-0291
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

EDDIE CASTRO, CASE NO. 02-4065
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

FRANKO CONCEPCION, CASE NO. 02-4063
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOHN DEMPS, CASE NO. 03-0292
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOHN EDDY, CASE NO. 03-0290
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

HUMBERTO ELIZALDE, CASE NO. 03-0313
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JANET HENNESSEY, CASE NO. 03-0147
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

RIGOBERTO MARTINEZ, CASE NO. 02-4166
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

MERRILL MCCOY, CASE NO. 03-0382
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

HENRY PIMENTEL, CASE NO. 03-0025
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

STACEY SEAY, CASE NO. 03-0008
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

MICHAEL STANLEY, CASE NO. 02-4119
Classification: State Park Ranger Cadet
Department of Parks and Recreation
ACTION: DENIED

STUART LONDON, CASE NO. 02-3705
Classification: Youth Correctional Counselor
California Youth Authority
ACTION: DENIED

CARLOS VILLALOBOS, CASE NO. 02-3597
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

KENNETH WILLIAMS, CASE NO. 02-4131
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

14. NON-HEARING CALENDAR

On October 7, 2003, the Board adopted item A. This item was presented by Karen Coffee, Chief, Merit Employment and Technical Resources Division, California State Personnel Board.

VOTE: Elkins, Alvarado, Harrigan - Aye.

- A. REENTRY PROGRAM INSTRUCTOR, CDC
The Department of Correction (CDC) and the Department of Personnel Administration proposes the establishment of the class of Reentry Program Instructor, CDC, and placing a Footnote 24 on this class effective July 1, 2004.

15. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

- A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

- (1) ASSISTANT EXECUTIVE OFFICER, HEALTH BENEFITS
The California Public Employee's Retirement System proposes to allocate the above position to the CEA category. The Assistant Executive Officer, Health Benefits will have primary responsibility for developing new health program policy and implementing the CalPERS Strategic Health Plan and

serves as the principal health policy advisor to the Chief Executive Officer/Deputy Executive Officer, Benefits Administration, and the CalPERS Board of Administration.

(2) CHIEF, INVESTIGATION DIVISION

The Department of Insurance proposes to allocate the above position to the CEA category. The Chief, Investigation Division is responsible for planning, organizing and directing the work of the Investigation Division in addition to setting policy governing the enforcement of laws, investigation and prosecution, both civil and criminal, of persons in the insurance industry.

(3) DEPUTY ASSISTANT SECRETARY OF PROP 50 STATEWIDE BOND IMPLEMENTATION

The California Resources Agency proposes to allocate the above position to the CEA category. The Deputy Assistant Secretary of Proposition 50 (Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002) Statewide Bond Implementation is responsible for establishing fiscal policy and controls to ensure the successful implementation of bond funds.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

(CORRECTION)

(1) CHIEF, ENTERPRISE BUSINESS AND STRATEGIC PLANNING OFFICE

The Department of Water Resources request to establish the above position to the CEA category has been disapproved effective August 25, 2003.

ACTION: Noted

16. WRITTEN STAFF REPORT FOR BOARD INFORMATION

- A. GOVERNMENT CODE SECTION 19683(F) REQUIRES THE STATE PERSONNEL BOARD TO PROVIDE THE GOVERNOR AND THE LEGISLATURE WITH AN ANNUAL REPORT REGARDING COMPLAINTS FILED AND LEGAL ACTIONS TAKEN PURSUANT TO SPB'S ROLE IN THE CALIFORNIA WHISTLEBLOWER PROTECTION ACT. THIS REPORT COVERS THE 2002 CALENDAR YEAR. SPB STAFF IS

Minutes - Page 12
October 7, 2003

REQUESTING THE BOARD TO APPROVE THIS REPORT FOR
SUBMISSION TO THE GOVERNOR AND THE LEGISLATURE.

ACTION: Report presented

A D J O U R N M E N T

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERLY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

2. VOCATIONAL INSTRUCTOR (SAFETY) (VARIOUS SPECIALTIES). Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

3. ANSWERS OR APPEALS FILED WITH STATE PERSONNEL BOARD
State Personnel Board (SPB) staff is proposing to adopt new Rule 63 to require, in part, that answers or appeals filed with SPB, requesting that a hearing or investigation be conducted by SPB, notify the responding party of all planned affirmative defenses and requests for relief. (Hearing held February 3, 2003).

NO ACTION

4. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003).

NO ACTION

5. LAWRENCE SCHAEFER, CASE NO. 02-0079. Appeal from 60 calendar days suspension and position reassignment AND HARRY MILLER, CASE NO. 02-0160. Appeal from demotion and position reassignment. Department of Corrections. (Hearing held June 3, 2003).

NO ACTION

6. BENJAMIN JOHNSON, CASE NO. 02-2700. Appeal from five-percent reduction in salary for six months. Department of Corrections. (Written testimony presented to Board September 9, 2003).

NO ACTION

7. ROBERT GREER, CASE NO. 02-3624. Appeal from dismissal. Department of Corrections. (Administrative Law Judge's proposed decision presented to Board September 9, 2003).

ACTION: On October 7, 2003, adopted Board decision rejecting Administrative Law Judge's proposed decision. Board to decide case itself.

VOTE: Elkins, Alvarado, Harrigan - Aye.

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

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Minutes - Page 18
October 7, 2003

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on October 7, 2003.

VOTE: Elkins, Alvarado, Harrigan - Aye.

WALTER VAUGHN
Executive Officer
California State Personnel Board

CORRECTION

The following case in the Summary Minutes of September 9, 2003,
under Administrative Law Judge Cases, Stipulations for Settlement
should have read:

ARLENE RUTHERFORD, CASE NO. 03-0524
Appeal from dismissal
Career Executive Assignment Appointment
Department of Financial Institutions - San Diego
ACTION: Stipulation for settlement disapproved